

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Alberth, Jr. et al. )  
)  
For: Method and Apparatus for Storing a )  
Message for Playback during a )  
User-Initiated Emergency )  
Telephone Call from a Wireless )  
Device )  
)  
Serial No.: 09/610,768 )  
)  
Filed: July 6, 2000 )  
)  
Examiner: Tran, T. )  
)  
Art Unit: 2618 )

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

**NOTICE OF APPEAL FROM THE EXAMINER TO THE  
BOARD OF PATENT APPEALS AND INTERFERENCES,  
Interview Summary, Pre-Appeal Brief Request for Review, and  
Petition Requesting a Third Month Extension**

In accordance with 37 CFR §41.31, applicants hereby appeal to the Board of Patent Appeals and Interferences from the last decision of the Examiner, dated March 21, 2007, wherein the Examiner made the rejection of the claims final, and the alleged subsequently mailed Advisory Action in response to Applicant's After Final Response, dated August 21, 2007. The present filing date of September 21, 2007, corresponds to the original term for response extended three months. A petition requesting a two month extension was previously filed with Applicants' after final response.

In connection with the Notice of Appeal, Pre-Appeal Brief Request for Review, and Petition requesting a third month extension, a fee in the amount of \$570 (\$1020 less previously paid \$450) is believed to be due, which corresponds to the fee for requesting the third month extension. The fee for filing a Notice of Appeal in the amount of \$500 has in effect already been paid, as the presently due fee is appropriately reduced by \$500, an amount corresponding to a previous amount already paid in connection with a previous filing of a Notice of Appeal on August 23, 2005. The previous Notice of Appeal filing fee should be applied to a later appeal on the same application, as prosecution was reopened prior to a decision on the merits by the Board. Consequently the previous fees paid are believed to be appropriately applied to a later filed appeal (see MPEP §1208.02). The Commissioner is hereby authorized and requested to charge said fee, to Motorola's Deposit Account No. 50-2117.

However in the event the applicants are mistaken and one or more fees are in fact due in connection with the present Notice of Appeal, and corresponding Appeal Brief being filed herewith, the applicants' representative authorizes the Commissioner to charge any such fee including any fee required to cover any deficiency associated with any underpayment, or to credit any overpayment to Deposit Account No. 50-2117, of Motorola, Inc.

Recognizing that the statutory deadline for filing a response, pursuant to the Examiner's previous final rejection was going to expire on September 21, 2007, the applicants' representative called Examiner Tran to discuss the status of the case. Applicants had previously filed an after final response canceling claim 11, the only pending claim that had not yet been allowed, which was intended to put the application into condition for allowance. All other non-canceled claims had been identified as being allowed.

In response to the status inquiry, the Examiner indicated that he had issued an advisory action. Upon inquiring as to the reason for the issuance of the advisory action, as the only claim remaining rejected had been canceled as part of applicants' last response, the Examiner indicated the identification of a couple of never previously raised concerns with a couple of the previously allowed claims. The applicants' representative questioned the propriety of raising new objections as part of an advisory action, and expressed surprise that the new objections would not have been more properly raised as part of a new non-final office action. At

one point, the Examiner appeared to acknowledge that the newly cited rejections probably should have been made as part of a new non-final office action, but the Examiner indicated that he was concerned with the prosecution being unnecessarily extended. The applicants' representative then indicated to the extent that the prosecution may have been extended by a further non-final rejection, under the circumstances, such an extension of the prosecution would hardly have been unnecessary. As it stands now, the applicants were being denied the opportunity to respond to a rejection to which they never had a previous opportunity to review and/or respond.

In view of the Applicants' above noted understanding, the Applicants' question the need for a third month extension, as it is believed that the alleged Advisory Action was issued in error, and that alternatively any new rejections should have been issued as part of a Non-Final Office Action, and/or the application should have been allowed, which would not have required any further extension for responding to the same. When responding, the applicants had a reasonable belief that the application was being put into condition for allowance. Consequently, to the extent that the USPTO might agree with the applicants, the Applicants would request that the Office consider refunding the fee paid for the third month extension.

Respectfully submitted,

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